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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

H-05-842m
10-24-05

UNITED STATES OF AMERICA

Plaintiff,

v.

GUINDI N. GUINDI,
Defendant.

No.:

CR 05 00655 JSW
VIOLATIONS: 18 U.S.C. § 1343 — Wire
Fraud (9 Counts); 18 U.S.C. § 1341 —
Mail Fraud (2 Counts); 18 U.S.C. §
1956(a)(1)(A)(i) — Financial
Transactions to Promote Unlawful
Activity (3 Counts)

SAN FRANCISCO VENUE

INDICTMENT

The Grand Jury charges:

BACKGROUND

At all times relevant to this Indictment:

1. Defendant GUINDI N. GUINDI ("GUINDI") was the founder, president
and board member of Netcap Holdings, Inc. ("Netcap"). GUINDI represented himself as
a venture capitalist with special access to stock in publicly-traded companies.

2. Netcap Holdings, Inc. ("Netcap") was a Delaware corporation that operated
from its offices in San Carlos, California. GUINDI portrayed Netcap as an incubator for

INDICTMENT

1 start-up companies and a source of funding for high-technology businesses.

2 THE SCHEME TO DEFRAUD

3 3. Between in or around March 1999 and February 2004, in the Northern
4 District of California, the defendant,

5 GUINDI N. GUINDI,

6 did knowingly and intentionally devise a scheme and plan to defraud, and to obtain
7 money and property by means of materially false and fraudulent promises, representations
8 and statements, well knowing that the promises, representations and statements were
9 materially false when made.

10 4. It was part of the scheme to defraud that GUINDI raised investment funds
11 from investors through two different, but overlapping and interlocking, components: (A)
12 raising investment funds through the purported purchase of restricted stock in various
13 well-known companies; and (B) raising investment funds by and through a company
14 called Netcap.

15 A. The IPO Component

16 5. It was part of the scheme to defraud that GUINDI raised funds for purposes
17 other than those intended by investors by representing that he had special access to
18 restricted stock.

19 6. In 1999 and early 2000, numerous companies were "going public," that is,
20 holding Initial Public Offerings ("IPOs") to raise large amounts of capital. During this
21 time, virtually all IPOs were bid up substantially over their initial price as soon as they
22 began trading over public markers, often resulting in massive gains for the initial
23 shareholders. IPO stock was therefore highly coveted.

24 7. Most investors do not have access to IPO stock at the initial offering price
25 (the "IPO price"). IPO stock at IPO price is generally available only to insiders, highly-
26 placed executives, and their best customers.

27 8. Beginning on or around March 1999, and continuing through on or about
28 November 2000, GUINDI made the representation to various investors that he had special

1 access to restricted IPO stock through special connections GUINDI claimed he had at
2 brokerage houses such as Morgan Stanley and Fidelity. This representation, as GUINDI
3 well knew at the time he made them, was materially false.

4 9. Among the IPO stocks to which GUINDI claimed to potential investors he
5 had access were shares in well-known companies that were "going public" during that
6 time period, including United Parcel Service (UPS), WebMethods (WEBM), Sycamore
7 Networks (SCMR), Freemarkets (FMKT), Avanex (ANMX), Silicon Laboratories, Inc.
8 (SLAB), and Palm (PALM).

9 10. GUINDI offered investors the opportunity to purchase, by and through him,
10 IPO stock in one or more of the above-mentioned companies. These investors otherwise
11 had no access to this restricted stock

12 11. To assure investors that he actually had access to IPO stock, as well as to
13 verify he had actually purchased them, GUINDI showed certain investors a document
14 purporting to represent his investment portfolio at Charles Schwab. The Charles Schwab
15 document purported to reflect that GUINDI had stock holdings valued at more than \$16
16 million, when in fact, as GUINDI well knew, the document was materially false and
17 fraudulent, and GUINDI never had holdings worth anywhere near \$16 million.

18 12. GUINDI told investors that the IPO stocks were subject to a six-month
19 "lock-up period" during which the investors could not trade the stocks. GUINDI further
20 told investors that he would keep the IPO stock in his Charles Schwab account during the
21 six-month lock-up period, after which the investor could sell or transfer the stock as he or
22 she wished.

23 13. Based on GUINDI's material misrepresentations, promises and statements,
24 various investors gave GUINDI a total of approximately \$950,000 to purchase pre-agreed
25 numbers of shares of IPO stock on the investors' behalf.

26 14. GUINDI did not purchase the IPO stock as promised. In fact, contrary to
27 his representations to investors, and as he well knew at all times, GUINDI did not have
28 special access to restricted IPO stock. Instead, he diverted the investors' money primarily

1 toward personal expenditures, repaying earlier investors, and as seed money for Netcap
2 Holdings, as described in paragraph 17, below.

3 15. As the lock-up periods began to expire, investors attempted to collect their
4 investment money from GUINDI. GUINDI repaid several investors using other
5 investors' money. To other investors, GUINDI gave false explanations why he could not
6 immediately repay them.

7 **B. The Netcap Component**

8 16. It was also part of the scheme to defraud that GUINDI raised funds for
9 purposes other than those intended by investors through a startup business called Netcap
10 Holdings.

11 17 GUINDI formed Netcap Holdings in 2000 and had it incorporated in
12 Delaware. GUINDI represented to potential investors that Netcap operated as an
13 incubator for start-up companies and a source of funding for high-technology businesses.
14 GUINDI solicited investments in Netcap at \$2 per share. GUINDI also used as seed
15 money for Netcap money that investors had given GUINDI to purchase IPO stock, as
16 described in paragraphs 5 through 15, above.

17 18. To give Netcap an aura of legitimacy, GUINDI arranged for the company to
18 lease office space in San Carlos. GUINDI also hired various individuals to compose a
19 "management team."

20 19. To entice investments in Netcap, GUINDI intentionally made materially
21 false representations, promises and assurances to investors, including the following:

- 22 a. That most investment monies would, in fact, be used for investment
23 in technology and startup businesses.
24 b. That well-known individuals such as Lee Iacocca had agreed to sit
25 on Netcap's Board of Advisors.
26 c. That Netcap had invested \$5 million in a startup company called
27 Data Entry Systems.
28 d. That wealthy Saudi investors would be making multi-million-dollar
investments in Netcap.

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- c. That GUINDI's personal stock portfolio at Charles Schwab and other brokerage houses was worth anywhere from \$1.6 to \$20 million.
- f. That Netcap served as a financial founder of Build to Order, Inc.
- g. That GUINDI had invested millions of dollars of his own money in Netcap.

20. Based on these materially false representations, promises and assurances, investors invested a total of approximately \$2.5 million in Netcap.

21. GUINDI made little or no effort in spending this money on its stated purposes. Instead, after paying for employee salaries and other expenses—as well as an investment in Data Entry Systems that was far smaller than what he had represented to investors—GUINDI treated the Netcap money as if it were his own spending money.

22. GUINDI wrote himself checks totaling more than \$1.6 million and spent the money on personal non-investment expenses, such as gambling in Las Vegas casinos and paying previous investors who complained to him.

COUNTS ONE through NINE: 18 U.S.C. § 1343 (Wire Fraud)

23. Paragraphs 1 through 22 are realleged as if fully set forth herein.

24. On or about the following dates, in the Northern District of California and elsewhere, for the purpose of executing a scheme to defraud, the defendant,

GUINDI N. GUINDI,

did knowingly transmit or cause to be transmitted the following wire communications in interstate commerce:

Count	Date	Wire Communication	From	To
ONE	11/2/00	Email from GUINDI to IPO Investors	Earthlink (guindi@earthlink.net)	Various email servers
TWO	1/29/01	Wire transfer of \$250,000	National Financial Serv. Corp., Boston, MA	Wells Fargo, Burlingame, CA
THREE	1/31/01	Wire transfer of \$40,000	Wells Fargo, Burlingame, CA	Bank of America (through CO)

Count	Date	Wire Communication	From	To
FOUR	1/31/01	Wire transfer of \$10,000	Wells Fargo, Burlingame, CA	Bank of America (through CO)
FIVE	3/12/01	Telephone call between GUINDI & Netcap Investor	Spring, TX	Burlingame, CA
SLX	4/23/01	Wire transfer of \$25,000	Northern Trust Int'l Bank, New York NY	Wells Fargo, Burlingame, CA
SEVEN	7/10/01	Telephone call between GUINDI & Netcap Investor	Spring, TX	Burlingame, CA
EIGHT	1/29/02	Telephone call between GUINDI & Netcap Investor	Spring, TX	Burlingame, CA
NINE	2/18/04	Telephone call between GUINDI & Netcap Investor	Spring, TX	Burlingame, CA

All in violation of Title 18, United States Code, Section 1343.

COUNTS TEN though ELEVEN: 18 U.S.C. § 1341 (Mail Fraud)

25. Paragraphs 1 through 24 are realleged as if fully set forth herein.

26. On or about the dates set forth below, in the Northern District of California and elsewhere, for the purpose of executing, and in furtherance of, a scheme and artifice to defraud, and in attempting to do so, the defendant,

GUINDI N. GUINDI,

did knowingly cause to be placed in a post office and authorized depository for mail matter the items listed below to be sent and delivered by the United States Postal Service according to the directions thereon:

Count	Date	Mailing	From	To
TEN	4/13/01	Check for \$25,000	Investor in Tiburon, CA	GUINDI/Netcap
ELEVEN	4/18/01	Check for \$25,000	Investor in Tiburon, CA	GUINDI/Netcap

All in violation of Title 18, United States Code, Section 1341.

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COUNTS TWELVE through FOURTEEN: 18 U.S.C. § 1956(a)(1)(A)(i) (Financial Transactions to Promote Unlawful Activity)

27. Paragraphs 1 through 26 are realleged as if fully set forth herein.

28. On or about the dates set forth below, in the Northern District of California and elsewhere, the defendant,

GUINDI N. GUINDI,

did knowingly conduct financial transactions, in and affecting interstate commerce, with the proceeds of a specified unlawful activity, to wit: wire fraud, in violation of 18 U.S.C. § 1343, and mail fraud, in violation of 18 U.S.C. § 1341, with the intent to promote the carrying on of the specified unlawful activity, as follows:

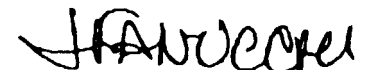
Count	Date	Transaction	From	To
TWELVE	1/30/01	Transfer of \$125,000	Wells Fargo # 0165078692	Wells Fargo #0056017965
THIRTEEN	1/31/01	Wire transfer of \$40,000	Wells Fargo #0056017965	Bank of America #01431
FOURTEEN	1/31/01	Wire transfer of \$10,000	Wells Fargo #0056017965	Bank of America #01425

All in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i).

Dated:


A TRUE BILL.

10/18/05


FOREPERSON

KEVIN V. RYAN
United States Attorney


EUMIL L. CHOI
Chief, Criminal Division

(Approved as to form: )

AUSA MICHAEL LI-MING WANG